

August 3 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 10-0290

FILED

AUG 03 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

GEORGE COZINO and DEBORAH ANN COZINO,)

Petitioners and Appellees,)

v.)

GLENN ROYCE JONES,)

Respondent and Appellant.)

O R D E R

The Petitioners and Appellees (Cozinos) have moved to dismiss the order appointing a mediator in this matter. They claim that, contrary to Appellant Jones's representation in his notice of appeal, this appeal is not subject to the mediation process required by M. R. App. P. 7. Jones has filed written objections to the motion to dismiss the mediator appointment.

The categories of appeal subject to mediation pursuant to M. R. App. P. 7(2) are workers' compensation, domestic relations, money judgments, and appeals that we, in our discretion, designate as appropriate for mediation. Jones argues that this appeal of a restraining order and permanent order of protection against him fall within the category of domestic relations matters because the stalking statutes are codified within Title 40, Chapter 15, MCA, and because the District Court cause number for this action incorporates a letter designation indicating a domestic relations matter.

M. R. App. P. 7(9) provides that, in general, mandatory appellate mediation is not subject to motion practice. Pursuant to that provision, determination of whether an appeal is subject to the appellate mediation requirement is ordinarily left to counsel. However, in rare instances where counsel cannot agree on whether the appeal is subject to mandatory appellate mediation, the interests of justice sometimes require our intervention.

This is one of those instances. We have reviewed the permanent order of protection from which this appeal is taken. Despite the location at which the stalking statutes have been

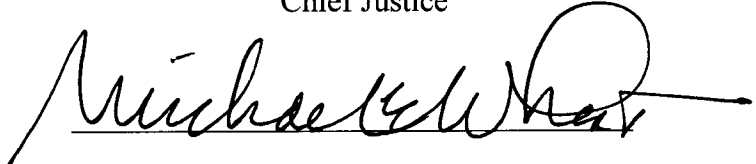
codified and despite the District Court cause number assigned to this case, this is not a domestic relations matter.

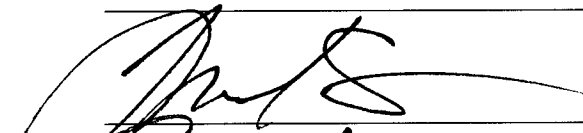
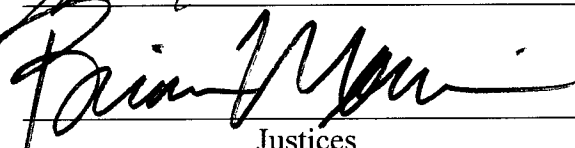
THEREFORE IT IS ORDERED that the Cozinos' motion is GRANTED. Because this appeal is not in the categories subject to mandatory appellate mediation, the Order appointing a mediator in this appeal is STRICKEN.

The Clerk is directed to provide copies of this Order to all counsel of record.

DATED this 30 day of August, 2010.


Chief Justice





Justices